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No. 65

IN THE 1965

Supreme Court of the United States

ROBERT D. WATKINS,

Appellant,

versus

J. F. CONWAY,

Appellee.

On Appeal from the Supreme Court of the State of Georgia.

REPLY TO MOTION TO AFFIRM.

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No. 954

IN THE
SUPREME COURT OF THE UNITED STATES

ROBERT D. WATKINS,

Appellant,

versus

J. F. CONWAY,

Appellee.

On Appeal from the Supreme Court of the State of Georgia.

REPLY TO MOTION TO AFFIRM

Both in his presentation of the issue and in the discussion thereof, the appellee has ignored the crux of this case insofar as the first question[1] regarding the violation of full faith and credit is involved. The right of a state to apply a statute of limitations to foreign judgments, so long as it does so evenhandedly without discrimination, is not and has not been questioned by appellant. See appellant's Jurisdictional Statement at pp. 6, 8, 9, 15. Yet, at most, this is all the appellee has said. Neither the issue framed by appellee nor the cases cited in appellee's Motion to Affirm deal with the precise question presented in this case, which is:

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[1]Insofar as the second question presented in this case is concerned, the appellee has made no argument nor cited any authority other than his own statement to the effect that equal protection is not denied in the instant situation. Since the appellee's Motion to Affirm, therefore, ignores the equal protection question, no further mention thereof will be made in this Reply.

> Whether consistently with the full faith and credit clause, Georgia may limit the period of enforceability of foreign judgments to five years while permitting a ten-year period of enforceability for domestic judgments?

The appellee pointedly ignores the question of discrimination presented by appellant and discusses no authority with reference thereto. Certainly the states have a right to enact statutes of limitations against foreign judgments, as the cases cited in appellee's Motion bear out, but they do not have authority to pass such statutes of limitation where they effect discrimination in favor of domestic judgments and against foreign judgments. This has been clearly presented in appellant's Jurisdictional Statement, and no authority to the contrary has been presented by appellee.

The only two authorities dealt with by appellee which do touch upon the issue of discrimination are the cases of *Great Western Tel. Co.* v. *Purdy*, 162 U.S. 329 (1896), and *Metcalf v. City of Watertown*, 153 U.S. 671 (1894). These cases are discussed respectively at pp. 11-12, and at p. 17, fn. 4 of appellant's Jurisdictional Statement, and both clearly indicate that the discriminatory application of a period of enforceability in favor of domestic judgments is unconstitutional and in violation of the full faith and credit clause. These are the only two authorities cited by appellant which in any manner discuss statutes of limitations where such discrimination is found. Both of these authorities are favorable to appellant, and appellee cites no other authorities dealing with such issue. Discrimination is the key. While a state may legislate a reasonable statute of limitations against foreign judgments, such a statute of

limitations is not reasonable and is not constitutional if it prescribes a shorter period for the enforcement of foreign judgments than the state prescribes for the enforcement of domestic judgments.

Appellant is grateful to appellee for pointing out that this same discrimination exists in the State of Florida between foreign and domestic judgments.[2] As a matter of fact, this type of discrimination against foreign judgments, insofar as the period of enforceability is concerned, exists in nearly every state of the Union. It is submitted, therefore, that this question is of quite some practical importance due to the great extent that this type of discrimination is now practiced. Purely apart from the practical importance of the matter, however, it is clear that as a legal proposition, a substantial Federal question has been raised. No authority has been cited by appellee either directly or indirectly related to the issue of discrimination (other than authorities favorable to appellant), while appellant has cited an abundance of authority indicating that such discrimination vitiates the statute in question. For these reasons, jurisdiction of the Supreme Court to review this case on appeal is apparent. Appellant urges that the Supreme Court give preliminary consideration to the case and permit briefs and oral arguments on the merits and dismiss the Motion to Affirm.

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[2]See page 4 of appellee's Motion to Affirm where it is stated that "Florida has a seven-year statute of limitations on foreign judgments while it maintains a twenty-year statute of limitations on domestic judgments.

Respectfully submitted,

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PROOF OF SERVICE

Emmet J. Bondurant, attorney for Robert D. Watkins, Appellant herein, and a member of the Bar of the Supreme Court of the United States, hereby certifies that on this 24 day of February, 1966, I served a copy of the foregoing Reply on the Appellee therein named, by mailing a copy thereof in a duly addressed envelope with postage prepaid to his attorney of record, Martin McFarland, 808 William Oliver Building, Atlanta, Georgia, 30303.

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